

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH M. SMITH,	§
	§
Defendant Below-	§ No. 181, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 9712014022
Plaintiff Below-	§
Appellee.	§

Submitted: May 15, 2009

Decided: June 19, 2009

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

**ORDER**

This 19<sup>th</sup> day of June 2009, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Kenneth Smith, filed this appeal from the Superior Court's denial of his motion for correction of sentence. The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Smith's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that a Superior Court jury convicted Smith in June 1998 of one count of first degree robbery. The Superior Court sentenced him as a habitual offender to life imprisonment. This Court

affirmed his conviction and sentence on direct appeal.<sup>1</sup> Thereafter, Smith filed multiple unsuccessful petitions challenging his conviction and/or sentence. In February 2009, Smith filed a motion for correction of illegal sentence, arguing that he was not afforded due process at his habitual offender hearing. The Superior Court denied his motion. This appeal followed.

(3) In his opening brief on appeal, Smith contends that: (i) the Superior Court erred in denying his motion for correction of sentence without holding a hearing; and (ii) he was not afforded due process prior to being sentenced as a habitual offender. We find no merit to these claims.

(4) A motion for correction of an illegal sentence under Rule 35(a) is very narrow in scope.<sup>2</sup> Rule 35(a) permits relief when “the sentence imposed exceeds the statutorily-authorized limits, [or] violates the Double Jeopardy Clause.”<sup>3</sup> Smith does not, and could not, argue that his sentence exceeds the legal limits or violates double jeopardy principles. In fact, the substance of Smith’s argument is that his sentence was imposed in an illegal manner. Such an argument, however, must be raised within 90 days of

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<sup>1</sup> *Smith v. State*, 1999 WL 734717 (Del. Sept. 7, 1999).

<sup>2</sup> *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

<sup>3</sup> *Id.* (quoting *United States v. Pavlico*, 961 F.2d 440, 443 (4<sup>th</sup> Cir. 1992)).

sentencing.<sup>4</sup> Smith's motion, however, was filed several years after his sentence was imposed. Accordingly, we find no error in the Superior Court's denial of the motion for correction of sentence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>4</sup> See Del. Super. Ct. Crim. R. 35(a) (providing that a motion to correct a sentence imposed in an illegal manner must be filed within the time limit set forth in Rule 35(b), i.e., within 90 days of sentencing).